

Approved as Amended: July 16, 2003

**CITY OF MORGAN HILL
JOINT SPECIAL AND REGULAR REDEVELOPMENT
AND SPECIAL CITY COUNCIL MEETING
MINUTES – JUNE 25, 2003**

CALL TO ORDER

Chairperson/Mayor Kennedy called the special meeting to order at 6:02 P.M.

ROLL CALL ATTENDANCE

Present: Chairperson/Mayor Kennedy
Agency/Council Members Carr, Chang, Sellers, and Tate.

DECLARATION OF POSTING OF AGENDA

Deputy City Clerk Malone certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

Redevelopment Agency and City Council Action

CLOSED SESSIONS:

1.

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant Exposure/Initiation of Litigation

Authority: Government Code Sections 54956.9(b) & (c)

Number of Potential Cases: 2

2.

CONFERENCE WITH LABOR NEGOTIATOR:

Authority: Government Code Section 54957.6

Agency Negotiators: Ed Tewes, City Manager; Helene L. Leichter, City Attorney; Mary Kaye Fisher, Human Resources Director

Employee Organization: AFSCME Local 101
Morgan Hill Community Service Officers Association
Morgan Hill Police Officers Association

Unrepresented Employees: Custodian/Building Maintenance Worker
Government Access Technician
Maintenance Worker Assistant
Utility Worker Assistant

Executive Management Group 1-A
Chief of Police
Director of Business Assistance & Housing Services
Director of Community Development
Director of Finance

Director of Public Works/City Engineer
Human Resources Director
Recreation and Community Services Manager
Assistant to the City Manager
Council Services and Records Manager

Middle Management Group 1-B
Police Captain
Deputy Director of Public Works
Assistant City Attorney
Assistant Director of Finance
Chief Building Official
Human Resources Supervisor
Planning Manager
Senior Civil Engineer
Budget Manager
Business Assistance and Housing Services Manager
Police Support Services Supervisor
Senior Planner
Project Manager
Utility Systems Manager
Recreation Supervisor
Secretary to the City Manager

Confidential Non-Exempt Employees Group 1-C
Administrative Analyst
Secretary to the City Attorney
Accounting Technician
Human Resources Assistant

OPPORTUNITY FOR PUBLIC COMMENT

Chairperson/Mayor Kennedy opened the Closed Session items to public comment.

Bruce Tichinin informed the City Council/Agency Board that he represents a client in a matter that will be discussed under closed session. He indicated he has already spoken with the City Attorney, and saw no reason to do so again.

No further comment were offered.

ADJOURN TO CLOSED SESSION

Chairperson/Mayor adjourned the meeting to Closed Session at 6:04 P.M.

RECONVENE

Chairperson/Mayor reconvened the meeting at 7:03 P.M.

CLOSED SESSION ANNOUNCEMENT

Mayor Kennedy announced there were no reportable actions taken in closed session.

SILENT INVOCATION

Chairperson/Mayor invited all to join in a silent invocation.

PLEDGE OF ALLEGIANCE

Chairperson/Mayor Kennedy extended an invitation to lead the Pledge of Allegiance to Santa Clara County Fire Department Battalion Chief Darbro.

RECOGNITIONS

Sister Cities Committee introduced Mayor Roselli from San Casciano, Italy, our Sister City.

Mayor Kennedy and City Council Members presented Joyce Maskell with a gift of a clock in recognition for her outstanding work in the completion of the Community Playhouse Project.

CITY COUNCIL SUB-COMMITTEE REPORT

None.

CITY MANAGER REPORT

City Manager Tewes reported the testing regimen for domestic water wells for perchlorate is continuing, and he is pleased to report all city wells have again tested non detect this month.

He also reported that the State has still not adopted a budget. State senate voted on a proposal, but it failed because of lack of enough votes. He has started to see numbers proposed in bills being voted on. The amount of \$1.2 billion is being proposed to be cut from cities; and our share of that amount would be nearly 500K from next fiscal year. He stated that it is important to stay vigilant and watchful and remind the legislature about reductions in local services that would result from such a funding reduction.

CITY ATTORNEY REPORT

City Attorney Leichter made no report.

OTHER REPORTS

None were presented.

PUBLIC COMMENT

Mayor Kennedy opened the floor to comment on items not on the agenda.

Mr. John Amos, a Volunteer in Fire Prevention (VIP) with California Department of Forestry, working out of the CDF facility on South Monterey Road, invited the Council and the public to visit the facility this weekend. They will be having a Field Day activity to test their amateur radio community's equipment for a twenty-four hour period beginning at 11:00 a.m. on Saturday until 11:00 a.m. on Sunday. This exercise is intended to ensure that all the equipment will operate effectively in the event of a major emergency. He also invited the Council to a small barbeque to be held at 6:00 p.m. on Saturday evening.

Mr. Dan Craig, of the Morgan Hill Downtown Association asked to speak on two items. There will be an Annual meeting and reception tomorrow night at the Community and Cultural Center at 6:00 p.m., and he invited the Council and public to come to the meeting. The second item he addressed is the current residential conversion ordinance as part of downtown plan implementation. He is particularly concerned about the yellow house on Monterey Road where Penny's Pretties was previously located. This recent change of use has triggered some requirements that are onerous for the tenant applying to occupy the building. He stated he is aware that City staff are working on this and wanted to weigh in on it and encourage the Council and staff to explore ways to resolve this issue in a timely manner so that a commercial tenant can be placed in this building.

Mr. Jerry Di Salvo also spoke regarding this yellow house located in the downtown area. He is the owner, and has tried to entice a new tenant, but those that are interested found that the use had never been changed from residential to business, even though there was a business use there for over five years. The cost of converting the building to meeting code requirements for handicapped access would be a hardship on the business. He could keep it residential, but this would not be a good use in this location. His favorite solution would be to have the Council override the use change. Staff cannot do this without the assistance of the Council. He is concerned about the hardship of conversion of the building to meet the code requirements for a business use. Building Inspector Ken de Luna had suggested going for a historical status, which would allow less onerous handicap requirements, but he would have to find an applicant that would allow for this type of designation. This would also restrict him in the future from expanding his building. He requested that the B use be allowed to continue.

Santa Clara County Fire Battalion Chief Darbro addressed this issue based on the current fire codes. He stated that staffing of fire department is at a minimum, and to dilute the fire codes currently on the books would cause the residential safety level to drop. Putting a business in that building would increase the level of fire hazard. He encouraged the Council to enforce the current code to maintain public safety for the benefit of public.

Council Member Tate commented that the Economic Development Subcommittee is already meeting on this issue and he wanted to let the speakers know that this is under consideration. They will report back to the Council when they have completed their study of the issue.

Redevelopment Agency Action

Action: *On a motion by Agency Member Tate, and seconded by Agency Member Sellers, the Agency Board unanimously (5-0) **Approved** Consent Calendar Item 1, as follows:*

1. **MORGAN HILL DOWNTOWN ASSOCIATION (MHDA) AGREEMENT**

Action: **Authorized** the Executive Director to Negotiate and Execute an Agreement with the Morgan Hill Downtown Association (MHDA) in an Amount Not to Exceed \$80,000, Subject to Agency General Counsel Approval.

City Council Action

CONSENT CALENDAR:

Council Member Sellers requested that Item 5 be pulled for comment.

Council Member Tate requested that Items 13 and 15 be pulled for a separate vote.

Council member Carr requested that Item 14 be pulled for comment.

Action: *On a motion by Council Member and seconded by Council Member, the City Council unanimously (5-0) **Approved** Consent Calendar Item 2 -4 and 6-12, as follows:*

2. **MAY 2003 FINANCE AND INVESTMENT REPORT**

Action: **Accepted** and **Filed** Report.

3. **AWARD CONTRACT TO PROVIDE PUBLIC WORKS PLAN CHECKING SERVICES ON AN AS-NEEDED BASIS**

Action: 1) **Approved** a Professional Contract with Harris and Associates, Inc. to Provide Land Development Plan Checking Services on an As-Needed Basis at a Cost Not-to-Exceed of \$100,000 for Fiscal Year 2003-2004; and 2) **Authorized** the City Manager to Execute the Contract, Subject to Review and Approval by the City Attorney.

4. **AWARD OF CONTRACT TO PROVIDE PUBLIC WORKS INSPECTIONS ON AN AS-NEEDED BASIS**

Action: 1) **Approved** a Professional Services Contract with Testing Engineers, Inc. (TEI) to Provide Public Works Inspection Services on an As-Needed Basis at a Cost Not to Exceed \$127,000 for Fiscal Year 2003-2004; and 2) **Authorized** the City Manager to Execute the Contract, Subject to Review and Approval from the City Attorney.

5. **COMMUNITY INDOOR RECREATION CENTER APPROVAL OF SUBCOMMITTEE APPOINTMENTS**

Council Member Sellers commented that there has been concern that there is not a broad

committee involvement on the IRC. He stated that the Council has made the decision to have one committee involved in the IRC, but this one committee will include representatives from other committees. He stated that everyone involved will need to be prepared to work, because they will be the only committee and there will be much to do over the next few months.

Action: *On a motion by Council Member Tate, and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** Subcommittee Appointments.*

6. **APPROVE LEASE FOR WOODLAND ESTATES**

Action: 1) **Approved** Lease Agreement; and 2) **Authorized** the City Manager to Execute the Lease of City-owned Open Space Adjacent to Llagas Creek with Woodland Estates for the Fee of \$1.00 Per Year.

7. **AWARD OF CONTRACT FOR 2002-2003 PAVEMENT RESURFACING PROJECT**

Action: 1.) **Awarded** Contract to O'Grady Paving, Inc. in the Amount of \$788,982 for Construction of the 2002-2003 Street Resurfacing and Reconstruction Project; and 2) **Authorized** a \$78,898 (10%) Construction Contingency.

8. **COUNTYWIDE HOUSEHOLD HAZARDOUS WASTE AGREEMENT**

Action: **Directed** Staff to Execute the Agreement with the County.

9. **PUBLIC WORKS MAINTENANCE AGREEMENTS FOR FISCAL YEAR 2003-2004**

Action: Contingent upon Approval of the Fiscal Year 2003-2004 Budget:

1. **Approved** New Maintenance Agreements for
 - a) Emergency Pump Maintenance and Repair for Booster Stations
 - b) Generator Maintenance Services; and
 - c) Emergency Repairs, Maintenance, and Parts for Well Sites;
2. **Approved** One Year Extensions to Agreements for
 - a) Laboratory Services for Potable Water Sampling and Analysis
 - b) Landscape Maintenance Services; and
 - c) Annual Tree Pruning and Removal;
3. **Authorized** the City Manager to Execute the Agreements/Extensions on Behalf of the City, Subject to Review and Approval of City Attorney.

10. **APPROVAL OF PROFESSIONAL SERVICES CONTRACT FOR SEWER TRUNK SURVEYING**

Action: **Authorized** the City Manager to Execute a Contract in the Amount of \$38,000 with Bagoye & King Surveying for a Preliminary Survey of the Proposed Sewer Trunk Alignment, Subject to Review and Approval by the City Attorney.

11. **APPROVAL OF CONTRACT/FUNDING FOR CONTRACT TEMPORARY ENGINEERING SERVICES**

Action: **Approved** the Contract and Funding for Two Temporary Full-time, and One Part-time Contract Engineers.

12. ACCEPTANCE OF STATE HIGHWAY 101 AT TENNANT AVENUE NORTHBOUND RAMPS SIGNAL PROJECT

Action: 1) **Accepted** as Complete the State Highway 101 at Tennant Avenue Northbound Ramps Project in the Final Amount of \$206,152; and 2) **Directed** the City Clerk to File the Notice of Completion with the County Recorder's Office.

13. APPROVED SPECIAL CITY COUNCIL MEETING MINUTES OF JUNE 12, 2003

Mayor Kennedy requested the following correction to these minutes: to change the time the meeting was called to order from 9:30 p.m. to 9:30 a.m.

Council Member Sellers requested the correction of the final sentence of the final paragraph from "Council Member Carr continued" to "Council Member Sellers continued".

Action: On a motion by Council Member Sellers, and seconded by Council Member Chang, the City Council voted 3-0-2, with Carr and Tate abstaining, to **Approve** the Minutes of June 12, 2003, as amended.

Redevelopment Agency and City Council Action

CONSENT CALENDAR:

14. MORGAN HILL COURTHOUSE ENVIRONMENTAL IMPACT REPORT

Council Member Carr asked a representative of Santa Clara County who was present if the article he had read in the Mercury News stating that the County was restructuring its courts would have an impact on the future Morgan Hill Courthouse; in particular, the programming that would go on in the courthouse.

Council Member Sellers also asked for information on the any structural changes and usage changes that are planned, such as the number of judges and facility usage.

The County representative responded that he could not provide an answer, but that he would take the questions back to the County and respond to the Council's questions.

City Manager noted that the Council has been provided with a revised version of Resolution No. 5687, which has a change on page 4, paragraph H, dealing with impact fees. The County did not respond to the comment on these fees, and he is aware that the County Counsel is conducting an evaluation of whether or not the County might be exempt from impact fees. In certifying the EIR the City wants to make clear in the new Section H the City is reserving the right to charge impact fees, if applicable.

Action: *On a motion by Agency/Council Member Sellers, and seconded by Agency/Council Member Chang, the Agency Board /Council unanimously (5-0) **Adopted** the revised version of Resolution No. 5687, Considering the Environmental Impact Report, Making Required CEQA Findings, and Adopting a Mitigation Monitoring and Reporting Program for the Morgan Hill Courthouse Project.*

15. APPROVED JOINT SPECIAL CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF JUNE 11, 2003

Action: *On a motion by Agency/Council Member Sellers, and seconded by Agency/Council Member Chang, the Agency Board /Council unanimously (4-0-1, with Tate abstaining) **Approved** Consent Calendar Item 15.*

City Council Action

OTHER BUSINESS:

16. DISCUSSION OF PHASING FOR COMMERCIAL PLANNED UNIT DEVELOPMENT (PUD) (Continued from June 18, 2003)

Director of Community Development Bischoff presented the staff report.

City staff has not been able to reach an agreement with the developers on how to develop the property within the current constraints of the general plan. There is no action before the Council this evening in regard to this specific project. Council is only being asked to make a decision on a policy matter at this time to provide direction to staff on how to implement the policy language as to what constitutes a “larger development” under Land Use Policy 10C of the General Plan, Action 10.5.

Mayor Kennedy opened the public comment.

Mr. John Telfer addressed the Council and stated that he had asked for PUD approval in advance of development of the property so he knows what can be done on a site and what the City wants to see on the property when he goes out to market these groups of properties. Stated that the owner of the middle section of 4.5 acres has always had plans to develop his property with a service station and now has Wienerschnitzel interested in possibly adding on to that in the back. He stated that Dr. Biedermann, who owns the approximately 14 acre parcel, is proposing a 10,000 square foot medical office building.

He plans to go through the PUD process, but would like to develop these two parcels as a first phase of the PUD development. If they are not going to be able to do that, then he will not start the PUD process. He needs some direction from the Council on whether this phased development will be possible. He asked the Council to look at their policies on this issue. He asked them to define what the term “repetitive uses” means, because there does not seem to be this problem on Tennant Avenue or in this quadrant of the city.

The other issue he requested them to consider is the need for this to be part of a larger development. He feels that there should be a master plan in place for this entire 29 acre parcel, and this is what he is trying to accomplish. The question is more about whether it can be done in phases as they are requesting. He feels that it would help the potential for the development of the balance of this property to allow the phased development of these two projects. The most important reason that Dr. Biedermann does not want to go forward without the service station, is that there is a substantial amount of the infrastructure that the service station developer has agreed to install, which will be of great benefit to Dr. Biedermann's property. He also believes that this benefits the future development of the PUD and will help attract additional uses.

Mr. Telfer requested that the Council provide some direction on the phasing issue, so he can know whether he should go forward with the PUD process.

Mr. Bruce Haller spoke as the representative from Wienerschnitzel, and as a resident of Morgan Hill. He stated that he understands the development issues of Morgan Hill, since he lives here. His company knew they did not want to be on Dunne Avenue or Cochrane, and they decided that Tennant Avenue would be a good location, and felt that it would also help to alleviate some of the traffic on Dunne Avenue. He stated that when they started working on the project 4 years ago there was no gas station in the area either. He feels that these uses are suited to Tennant Avenue. When they started the PUD process with their project they felt the process was vague. He sees other PUD developments around town that are not fully developed. He would love to be in town, but needs the traffic from the freeway to make the business a success. He is hoping for an explanation from the Council on what they are going to be able to do, and feels that Wienerschnitzel would be an asset to the community.

No further comments being offered, the public comment was closed.

Council Member Sellers stated that we have talked about this issue in the past. The difference this time is that the Council just went through a discussion of PUD developments and what is appropriate. He keeps getting stuck on the definition of a larger development and feels that it needs to be more definitive than it currently is. If, as we have indicated through staff, it makes sense to put in the medical services building by itself, than it must be that it constitutes a larger development; and if that is the case, then we should allow the other uses at the same time. The other issue that bears discussion is whether there is a need for this service or product. He stated that medical services are a significant need, that there is an effort underway to attract medical services to the community, and this is an opportunity to attract medical services. Because this could easily be termed a larger commercial use, and this medical use is one we desire, he feels it would make sense to proceed on this. Developing that initial use will help with the development of the PUD, and he thinks the development of the infrastructure and the initial commercial use will facilitate the development of the remainder of the PUD, so he feels the Council should support this.

Mayor Kennedy concurred, and agreed with the benefit of shifting traffic from Dunne to Tennant. He asked the City Manager if this is a possible location for an auto dealership.

City Manager Tewes responded yes, but the challenge would be that it would be within the 10 mile radius of the dealerships in Gilroy, which would limit the dealerships that could locate at this site. He also noted that the Council will discuss this issue at their workshop on auto dealerships to be held next week.

Council Member Tate stated that each time this issue is raised, he has the same concern that there are only a limited number of corners near the freeway; and because they are rare and precious commodities, the Council placed the PUD requirement on them. The question is, do we want to put ancillary uses on these properties and then make a larger tenant have to fit to the ancillary uses, or do we want to get the major tenant in first and have the ancillary uses fit to them. He is not sure the 10,000 square foot medical building is the best major use of this piece of property. He does not want a major use that comes later to have to fit itself to these smaller uses.

Council Member Carr stated that he agrees, and feels that this would be a good goal if the economy was booming and a lot of people were knocking on the door to develop. But the reality is that we are not in a booming economy, and how long are we willing to hold out for an anchor tenant to help with the infrastructure. If we are going to develop, he feels that we need to lay the ground work now.

Council Member Sellers stated that he concurs, but comes to it in a different way. He asked if Council Member Tate's concern was that the piecemeal approach would preclude a major tenant being interested later on.

Council Member Tate responded yes.

Council Member Sellers stated that since this is a 14 acre parcel, he feels that the Council could proceed, with the eventual goal of having a major tenant.

Council Member Chang returned to the question of whether this piece of land could be one that would come under consideration for an auto dealership at the workshop next week, and Mayor Kennedy responded that this would be something for discussion at that time. She stated she was concerned that if it is a possible candidate for dealership use, this decision should wait until after the workshop to discuss this issue because if you plan for an auto dealership it might be laid out differently.

Council Member Sellers recalled from a previous discussion that these uses would not preclude any option, because these two uses will be set up so that a larger use could built around them; and no matter how it was laid out these types of uses would be what would ultimately be placed in this PUD anyway.

Council Member Tate stated that if he believed that assumption, he would support it, but he does not believe that assumption.

Mayor Kennedy stated that he understands and shares concerns raised about jeopardizing a future use that would be better and more appropriate for this PUD. But we have waited a long time and he now feels more like Council Member Carr that perhaps we need to do something to get this moving forward.

Council Member Chang asked if we do this tonight would that preclude putting a dealership there.

Director of Community Development Bischoff responded that no, it would not preclude an auto dealership being placed here. If the Council gave the green light tonight, the infrastructure that would be installed would leave the site open to future development.

Mr. Telfer added the comment that he feels that the Council would have the opportunity to discuss this when the PUD actually comes before them for approval. At that time they would be able to see the locations of infrastructure and construction

Mr. Bischoff stated that the PUD still has not been adopted, and the Council will have the final approval of what is submitted, and the opportunity at that time to make sure the options for larger tenants is protected.

Council Member Sellers moved that the interpretation of Action 10.5 be modified to allow for the type of uses detailed, with the understanding that the projects still will have to go through the entire PUD process.

Council Member Carr seconded the motion, but asked to hear the comments of the City Manager.

City Manager Tewes stated he was offering help with the wording of the motion. He stated he wanted to make sure that the Council understood that they were not amending anything with their motion, but were only adopting a policy for staff and applicants regarding what constitutes the larger development required by the General Plan. It appears that the larger development proposed this evening, such as the 10,000 square foot medical office building, would be appropriate for that first phase; and the Council has indicated, in accordance with what is already the process, that they would be reviewing the PUD for its impact on future development opportunities.

Council Member Carr felt that this reinterpretation of what constitutes a “larger development” would be a trial basis. He recommended that the Council review the reinterpretation after it has been applied to determine if it in fact made sense, was the right way to proceed, and that the Council did not make a mistake on what it wanted to do after its application.

Council Member Tate did not believe that this reinterpretation cannot be a trial as it is a Council commitment that it is heading in this direction as there are no parcels left to correct the decision if the Council was wrong its application.

Council Member Carr stated that one of the items that strikes him about the general plan, at time of interviewing planning commissioners, every applicant talked about the general plan as being a living document. He wanted to protect the general plan and abide by it. He did not believe that everything contained within the General Plan is not set in tone.

Council Member Tate did not disagree that the Council could not change it. He disagreed that the Council has a chance to correct the situation as there are no parcels left to correct the situation.

Council Member Sellers felt that this PUD can be corrected when the Council reviews the precise development plan. He said that it would be conceivable that the Council may state that development was wrong.

Action: *On a motion by Council Member Sellers, and seconded by Council Member Carr, the City Council, on a 3-2 vote with Mayor Pro Tempore Chang and Council Member Tate voting no, **Directed** Staff to apply a reinterpretation of what constitutes a “larger development” as required by the General Plan for the first phase of development; subject to review and approval of Council through the PUD approval process for any impact on future development.*

17. APPROVAL OF TRUNK SEWER FUNDING IN GILROY AT NEW TARGET DEVELOPMENT

Director of Public Works Ashcraft presented the staff report, indicating that the City of Gilroy is requesting the City of Morgan Hill fund one half of the cost (\$400,000) to install 2,000 lineal feet of trunk sewer underneath the Target development. He indicated that he was apprised on Monday that the price tag has gone up slightly due to engineering, surveying and a 4% contingency. Therefore, Gilroy's request has been increased for the City's share of \$420,000 to cover these additional expenses. If the finding of Gilroy's consultant is correct, the Cities of Morgan Hill and Gilroy will have a lot more trunk sewer to build in the future, 5-10 years out. He said that the 2,000 lineal feet is an immediate problem because if it is not built soon under the Target development, it could cost twice as much to build the sewer trunk in the future if improvements are torn up. He indicated that staff recommends that the City support the City of Gilroy's request and appropriate \$420,000 from the unappropriated sewer impact fund balance to fund this project. Staff will return with a recommendation to hire a consultant to spend more time looking at the specifics of this trunk sewer and the capacity of the two cities, including the need and timing of the replacement trunk sewer.

Mayor Kennedy inquired whether the sewer split was at 42%/58% (Morgan Hill/Gilroy).

Mr. Ashcraft responded that the City owns 41.9% sewer capacity in the plant and that Gilroy owns the remainder. The 50/50 split refers to sewer trunk capacity in a certain reach of the trunk sewer. He indicated that there are a series of trunk sewers that transport the sewage to the wastewater treatment plant. He indicated that this trunk has been found to be undersized as it was built in the late 1960s and that it may have been the second trunk sewer built to serve the joint cities. He stated that this trunk line was built prior to the establishment of SCRWA. He indicated that this is not a SCRWA issue as it never budgeted for trunk sewer or maintenance. He said that the SCRWA agreement was the fourth or fifth agreement entered into between the Cities. However, in terms of trunk sewer, there are only 2 or 3 agreements in place. There are other agreements that have to do with capacity that have been entered into over the past several years.

Mayor Kennedy noted that this is a new parallel trunk and inquired why a new agreement would not be executed and based on a 42%/58% split as this would be a split in the flow.

Mr. Ashcraft reiterated that the 42%/58% split has to do with plant capacity and the ratio of the current flow and has nothing to do with the sewer lines. He indicated that the size and the capacity varies as you get closer to the sewer plant and that the City of Morgan Hill's capacity varies. This capacity varies as there is a set capacity as you leave Morgan Hill. However, as the pipe size gets bigger and the capacity gets larger to accommodate San Martin and Gilroy's growth, Morgan Hill's percentage goes down.

Mayor Kennedy stated that he was not comfortable moving forward with this request based on an old agreement that may no longer be valid.

City Manager Tewes indicated that an analogy would be that it is the City's investment in the expansion of the plant itself. The City of Morgan Hill will be responsible for investing to achieve a certain specified amount of capacity. The flow number (42%) is how much the City uses in terms the capacity, on a daily basis. He said that demand charges are based on flow rates, and to find the capacity in the plant or buying capacity in the trunk sewer will be a function of the amount of capacity the City will be buying, and not the percentage of capacity.

Mr. Ashcraft indicated that the percentages of the various trunk lines equate to a total of 100%. He said that the Carollo Sewer Master Plan shows the City's built out wastewater capacity on an average daily flow basis of approximately 5.1 mgd. At build out, based on the current General Plan, it will flow at 5.1 mgd. He said that the system has to be designed for the peak flow and that for the peak flow, the City needs 7.5 mgd sewer trunk capacity from the far edges of Morgan Hill all the way down to the plant. The City's master plan states that this is the City's peak flow and that the pipeline must be capable of handling this flow. Gilroy is stating that the City does not have 7.5 mgd. There is insufficient capacity because the old trunk sewer constructed in the 1960s was laid out too flat. Therefore, there is less capacity.

Mayor Kennedy inquired if there is time to receive additional technical backup information on this issue.

Mr. Ashcraft indicated that there is a lot more detail but that the issue before the Council this evening is rather small in relationship to the bigger problem. The bigger problem could result in a cost of approximately \$5 million. He felt that the City would need more time to study this issue. He said that it is not an easy thing for staff to accept this late breaking news from the City of Gilroy and approve the City's fair share. Should the City delay the sewer trunk line at this time, and the City finds that it needs the additional capacity and parallel the trunk line, there is a potential that it would cost the City twice as much to build the sewer line after development is built in tearing up all of the improvements.

Council Member Sellers stated that there is not an argument of what the City should do but that there is argument about what is the City's fair share.

Council Member Tate felt that there is also an argument on the timing. He could not see why the City of Gilroy would not front the entire \$850,000 because of their development. He wondered why the City of Gilroy could not wait and collect the a fair share of the money after the City starts developing/spending money. He did not understand why the City of Morgan Hill should pay at this point in time when it does

not benefit the City. He did not know why the City of Morgan Hill should front the City of Gilroy the money.

City Manager Tewes indicated that timing is crucial to the construction of this trunk reach out of the five miles during the construction period. He noted that it is staff's recommendation that the Council not approve the attached cost sharing agreement as drafted by the City of Gilroy as staff believes that there are problems with this agreement. In any event, a new agreement will need to be drafted. He suggested that staff be allowed to return to the Council with additional data and identify precisely how much capacity the City thought it had and how much is needed. He said that it would be helpful, from Gilroy's perspective, although not a contractual commitment, if the Council could indicate its willingness to pay the City's fair share of the capacity in the new line. This will give the City of Gilroy a sufficient comfort level to move forward. He reiterated that the City of Morgan Hill needs capacity in this pipe whether it is built now or built later. He indicated that it would be more efficiently built at this time. He said that the City of Gilroy could state that it does not need the advance at all and that it could size the pipe for Gilroy's need and allow Morgan Hill to worry about its capacity at a later date. He noted that the City has had a cooperative relationship. He said that the end result is what the City of Morgan Hill's fair share is. He felt that the Council has raised important questions which need to be addressed and be responded to. However, he was not sure whether the City of Gilroy would be in a position to state that it would advance the City of Morgan Hill's fair share to be worked out at a later date.

Council Member Tate stated that the only reason that the trunk line is being installed at this time is for the City of Gilroy to proceed with a development. He did not believe that the City of Morgan Hill has a choice.

Mr. Ashcraft indicated that the building permits have been issued and that the Target building is under construction.

Mayor Pro Tempore Chang indicated that the City has the choice of not paying its fair share at this time.

Council Member Sellers felt that not paying the City's fair share at this time would not be a wise thing to do in the long run.

Mayor Pro Tempore Chang inquired whether this Target facility would be replacing Morgan Hill's Target.

Mr. Toy indicated that Target is looking at plans to expand the store in Morgan Hill. It is his understanding that the Gilroy Target store would not impact the Target store in Morgan Hill.

Mayor Kennedy stated that he supported paying the City's fair share. He did not support including a maximum expenditure limit at this point. He would support everything else that staff is requesting. He recommended that instead of stating \$420,000, it be indicated that the City will pay its fair share. He would authorize staff to negotiate the City's fair share. If the City is unsuccessful in receiving its fair share, it was his assumption that the City of Gilroy would proceed with construction.

Mr. Ashcraft informed the Council that it has been suggested to him that one potential affect would be that if the City of Morgan Hill did not approve funding and the City of Gilroy was left to go alone with only the \$400,000 that has been appropriated, they could build half of the pipe closest to the building, foregoing the piping in the parking lot. If built 5-10 years from now, the trunk line would be at a much greater cost as you would need to remove parking and landscaping to install the line. He informed the Council that the City of Gilroy brought this issue to City staff two weeks ago. He said that the City of Gilroy was in the midst of their sewer master plan study at the same time that Target was under development. It was found that the pipe was laid at too flat of a slope so that it had less capacity. The pipe was built to the size it was designed, but was laid in some areas to almost half the grade. Therefore, it has half of the capacity in some places. Had Gilroy started the review of their sewer master plan two months later, the City of Morgan Hill would have found this out at a later date and Target would have been built; too late to do anything. He indicated that the City's current consultant conducted a field survey to verify the capacity. This is when it was found that the grade was laid too flat.

Council Member Sellers stated that both cities have the responsibility because a joint agreement exists.

Mayor Kennedy inquired whether the City of Gilroy was planning to replace the sewer trunk anyway because the study showed it needed more capacity.

Mr. Ashcraft responded that the City of Gilroy's sewer master plan from 10 years ago stated that the existing line located under the Target facility was sufficient for the build out needs for both cities. Now, the City of Morgan Hill has a new sewer master plan and a new General Plan. The City of Gilroy also has a new General Plan and has hired a consultant to work on a sewer master plan. As the consultant was looking at the master plan, he may have found that this sewer line may not have sufficient capacity even if it was laid to the right grade. The consultant found that it had about half of the capacity as it was laid in places to half the slope.

Council Member Sellers stated that given all of this information it seems that the City should proceed with the maximum expenditure, making it clear to staff that the City's fair share is a huge issue that has to be addressed. He felt that the City was lucky to happen to find this information at this time. He felt that this would be a wise expenditure, one that the Council is not comfortable with.

Council Member Carr did not know why the City would want to negotiate its capacity down. He noted that the discussion is not about use but about capacity. He stated that the City of Morgan Hill wants to have 50% of the capacity. He said that in the future, the City of Morgan Hill's capacity may be greater than the current use and that the City of Gilroy would be in the driver's seat to charge the City different rates for a different amount for trunk sewer line. Therefore, he did not know why the City of Morgan Hill would be interested in lowering the capacity of the agreement that is currently in place. While the City of Morgan Hill may not like the timing of this issue and some of the questions raised, he felt that this is one of the advantages of not having the sewer treatment plant in Morgan Hill.

Council Member Tate stated his appreciation of staff's explanation as it makes it clearer as to the circumstances leading up to this issue.

Mayor Pro Tempore Chang inquired how the City's trunk capacity ever exceeds the City's designated sewer plant's capacity of 42%.

Mr. Ashcraft responded the sewer trunk line exceeds the 42% capacity because part of the trunk is in the City of Morgan Hill. Therefore, there are trunks in Morgan Hill that the City owns that are at 100% capacity. As you get closer to the sewer plant, the City owns different trunk percentages.

Action: *On a motion by Council Member Sellers, and seconded by Council Member Carr, the City Council unanimously (5-0) **Authorized** a Maximum Expenditure of \$420,000 from the Unappropriated Sewer Impact Fee Fund Balance for this Co-op Project with the City of Gilroy and **Approved** the Concept of a Cost Sharing Agreement and **Authorized** the City Manager to Execute, with Particular Attention to the Issue of Fair Share of Costs, Subject to Review and Approval by City Attorney.*

Redevelopment Agency and City Council Action

OTHER BUSINESS:

18. UTILITY UNDERGROUNDING FOR THE ISAACSON GRANARY (Continued from June 18, 2003)

Director of Business Assistance and Housing Toy presented the staff report, recommending that this issue be referred to the Council Economic Development Subcommittee for further consideration.

Mayor Kennedy opened the public comment.

No comments being offered, public comment was closed.

Council Member Sellers expressed his concern about exempting specific areas from undergrounding. He feels that there needs to be a longer term approach and some opportunities for relief. He does not want to exempt a few projects now and end up in the future with no resources to proceed with the undergrounding.

Action: *On a motion by Agency/Council Member Chang, and seconded by Agency/Council Member Sellers, the Agency Board /Council unanimously (5-0) **Directed** Staff to Work with the Council Economic Development Subcommittee to Develop a Program to Assist Developments with Either the Payment of Utility Undergrounding In-Lieu Fees and/or the Installation of the Utility Undergrounding.*

RECONVENE TO CLOSED SESSION

Chairperson/Mayor Kennedy adjourned the meeting to Closed Session at 8:54 p.m.

RECONVENE

Chairperson/Mayor Kennedy reconvened the meeting at 10:13 p.m.

CLOSED SESSION ANNOUNCEMENT

There were no reportable actions.

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

ADJOURNMENT

There being no further business, Chairperson/Mayor Kennedy adjourned the meeting at 10:15 p.m.

MINUTES RECORDED AND PREPARED BY:

MOIRA MALONE, DEPUTY CITY CLERK

IRMA TORREZ, City Clerk/Agency Secretary